

MEMORANDUM OF LAW

DATE: February 12, 1993

TO: Councilmember Ron Roberts

FROM: City Attorney

SUBJECT: San Francisco Ordinance on Aggressive Soliciting

By memorandum dated January 13, 1993, you asked for an opinion regarding the possible applicability to San Diego of the recently enacted San Francisco law regarding the prohibition of aggressive soliciting. You attached a copy of that ordinance and asked if there are any aspects of the law that the City of San Diego could adapt which would improve the City's ability to address this problem.

San Francisco Ordinance

San Francisco Police Municipal Code section 120-1 makes it unlawful for any person on the streets, sidewalks or other places open to the public in the City and County of San Francisco "to harass or hound another person for the purpose of inducing that person to give money or other thing of value."

A solicitor "harasses or hounds" another when the solicitor closely follows the solicitee and requests money or other thing of value, after the solicitee has expressly or impliedly made it known to the solicitor that the solicitee does not want to give money or other thing of value to the solicitor.

First Amendment Issue

San Francisco's aggressive solicitation ordinance seeks to protect the public from persons who "harass or hound" for the purpose of inducing members of the public to give money or other thing of value. The ordinance, like Penal Code section 647(c), is aimed specifically at protected speech in a public forum. To pass constitutional muster, the City must demonstrate that this content-based infringement on free expression in a public forum is "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Boos v. Barry*, 485 U.S. 312, 321 (1988).

The City of San Francisco had lost an earlier First Amendment challenge to Penal Code section 647(c), which provides that any person who "accosts other persons in any public place or

in any place open to the public for the purpose of begging or soliciting alms" is guilty of a misdemeanor. That case, *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991), was one in which Section 647(c) was being enforced by the San Francisco Police Department against persons soliciting alms in public streets and sidewalks. In *Blair*, the United States District Court for the Northern District of California held Section 647(c) invalid as violative of the First and Fourteenth Amendments of the United States Constitution.

Having found begging to be a First Amendment-protected activity, the *Blair* Court then considered whether the state interest promoted by Section 647(c) - to avoid annoyance to the public - was so "compelling" as to justify a limitation on protected speech. The Court concluded that the interest served was not sufficiently compelling. The court did recognize that avoiding activity dubbed coercive, threatening or intimidating "may be a compelling interest depending on how these words were defined." *Id.* at 1324.

San Francisco's aggressive solicitation ordinance is an effort to fashion a law which provides the "compelling interest" found lacking in Section 647(c) by the *Blair* court. The definition of the "harasses or hounds" in the San Francisco ordinance may therefore furnish a "compelling interest" to justify a limitation on begging if the court finds it is narrowly drawn and avoids activity dubbed "coercive, threatening or intimidating."

This office has been monitoring the San Francisco aggressive solicitation ordinance. To date it has not been challenged in court. The American Civil Liberties Union (ACLU) vigorously opposed the ordinance prior to its enactment. It is anticipated the ACLU will find a case to test the constitutionality of the ordinance.

The San Francisco City Attorney's Office advised there have been no prosecutions under the ordinance and few are anticipated. Successful prosecution depends largely on the willingness of a citizen-victim to sign a complaint and later testify in court if required to do so.

This office will continue to track the San Francisco aggressive solicitation ordinance and keep you advised. San Francisco has a formidable burden to show that its ordinance is "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." If the ordinance withstands the constitutional challenge, it should be assessed as a law enforcement tool.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:jp:520.1(x043.2)

ML-93-19

TOP

TOP